

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Cafe Venetia, Inc., a Delaware
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Cafe Venetia, Inc., a Delaware Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Cafe Venetia, Inc. owned Café Venetia located at or about 419 University Ave, Palo Alto, California, in April 2021.

3. Defendant Cafe Venetia, Inc. owns Café Venetia located at or about 419 University Ave, Palo Alto, California, currently.

1 4. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein is
6 responsible in some capacity for the events herein alleged, or is a necessary
7 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
8 the true names, capacities, connections, and responsibilities of the Defendants
9 are ascertained.

10
11 **JURISDICTION & VENUE:**

12 5. The Court has subject matter jurisdiction over the action pursuant to 28
13 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
14 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

15 6. Pursuant to supplemental jurisdiction, an attendant and related cause
16 of action, arising from the same nucleus of operative facts and arising out of
17 the same transactions, is also brought under California's Unruh Civil Rights
18 Act, which act expressly incorporates the Americans with Disabilities Act.

19 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
20 founded on the fact that the real property which is the subject of this action is
21 located in this district and that Plaintiff's cause of action arose in this district.

22
23 **FACTUAL ALLEGATIONS:**

24 8. Plaintiff went to Café Venetia in April 2021 with the intention to avail
25 himself of its goods or services motivated in part to determine if the
26 defendants comply with the disability access laws. Not only did Plaintiff
27 personally encounter the unlawful barriers in April 2021, but he wanted to
28 return and patronize the business again but was specifically deterred due to his

1 actual personal knowledge of the barriers gleaned from his encounter with
2 them.

3 9. Café Venetia is a facility open to the public, a place of public
4 accommodation, and a business establishment.

5 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
6 to provide wheelchair accessible dining surfaces in conformance with the ADA
7 Standards as it relates to wheelchair users like the plaintiff.

8 11. Café Venetia provides dining surfaces to its customers but fails to
9 provide any wheelchair accessible dining surfaces.

10 12. A problem that plaintiff encountered was the lack of sufficient knee or
11 toe clearance under the outside dining surfaces for wheelchair users.

12 13. Plaintiff believes that there are other features of the dining surfaces that
13 likely fail to comply with the ADA Standards and seeks to have fully compliant
14 dining surfaces for wheelchair users.

15 14. On information and belief, the defendants currently fail to provide
16 wheelchair accessible dining surfaces.

17 15. Additionally, on the date of the plaintiff's visit, the defendants failed to
18 provide wheelchair accessible sales counters in conformance with the ADA
19 Standards as it relates to wheelchair users like the plaintiff.

20 16. Café Venetia provides sales counters to its customers but fails to provide
21 any wheelchair accessible sales counters.

22 17. One problem that plaintiff encountered was that the sales counter was
23 too high. Although there was a lowered portion of sales counter nearby, this
24 was not used to conduct transactions. An air purifier was located on the
25 lowered section of counter. As a result, plaintiff was helped at the higher
26 counter (located at about 44 inches above the finish floor), where he struggled
27 to use the point-of-sale machine – even with assistance from an employee.

28 18. Plaintiff believes that there are other features of the sales counters that

1 likely fail to comply with the ADA Standards and seeks to have fully compliant
2 sales counters for wheelchair users.

3 19. On information and belief, the defendants currently fail to provide
4 wheelchair accessible sales counters.

5 20. These barriers relate to and impact the plaintiff's disability. Plaintiff
6 personally encountered these barriers.

7 21. As a wheelchair user, the plaintiff benefits from and is entitled to use
8 wheelchair accessible facilities. By failing to provide accessible facilities, the
9 defendants denied the plaintiff full and equal access.

10 22. The failure to provide accessible facilities created difficulty and
11 discomfort for the Plaintiff.

12 23. The defendants have failed to maintain in working and useable
13 conditions those features required to provide ready access to persons with
14 disabilities.

15 24. The barriers identified above are easily removed without much
16 difficulty or expense. They are the types of barriers identified by the
17 Department of Justice as presumably readily achievable to remove and, in fact,
18 these barriers are readily achievable to remove. Moreover, there are numerous
19 alternative accommodations that could be made to provide a greater level of
20 access if complete removal were not achievable.

21 25. Plaintiff will return to Café Venetia to avail himself of its goods or
22 services and to determine compliance with the disability access laws once it is
23 represented to him that Café Venetia and its facilities are accessible. Plaintiff
24 is currently deterred from doing so because of his knowledge of the existing
25 barriers and his uncertainty about the existence of yet other barriers on the
26 site. If the barriers are not removed, the plaintiff will face unlawful and
27 discriminatory barriers again.

28 26. Given the obvious and blatant nature of the barriers and violations

1 alleged herein, the plaintiff alleges, on information and belief, that there are
 2 other violations and barriers on the site that relate to his disability. Plaintiff will
 3 amend the complaint, to provide proper notice regarding the scope of this
 4 lawsuit, once he conducts a site inspection. However, please be on notice that
 5 the plaintiff seeks to have all barriers related to his disability remedied. See
 6 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 7 encounters one barrier at a site, he can sue to have all barriers that relate to his
 8 disability removed regardless of whether he personally encountered them).

9
 10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 11 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 12 Defendants.) (42 U.S.C. section 12101, et seq.)

13 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint.

16 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 17 privileges, advantages, accommodations, facilities, goods and services of any
 18 place of public accommodation is offered on a full and equal basis by anyone
 19 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 20 § 12182(a). Discrimination is defined, inter alia, as follows:

- 21 a. A failure to make reasonable modifications in policies, practices,
 22 or procedures, when such modifications are necessary to afford
 23 goods, services, facilities, privileges, advantages, or
 24 accommodations to individuals with disabilities, unless the
 25 accommodation would work a fundamental alteration of those
 26 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 27 b. A failure to remove architectural barriers where such removal is
 28 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are

defined by reference to the ADA Standards.

c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

29. When a business provides facilities such as dining surfaces, it must provide accessible dining surfaces.

30. Here, accessible dining surfaces have not been provided in conformance with the ADA Standards.

31. When a business provides facilities such as sales or transaction counters, it must provide accessible sales or transaction counters.

32. Here, accessible sales or transaction counters have not been provided in conformance with the ADA Standards.

33. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

34. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

35. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.

1 Code § 51-53.)

2 36. Plaintiff repleads and incorporates by reference, as if fully set forth
3 again herein, the allegations contained in all prior paragraphs of this
4 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
5 that persons with disabilities are entitled to full and equal accommodations,
6 advantages, facilities, privileges, or services in all business establishment of
7 every kind whatsoever within the jurisdiction of the State of California. Cal.
8 Civ. Code §51(b).

9 37. The Unruh Act provides that a violation of the ADA is a violation of the
10 Unruh Act. Cal. Civ. Code, § 51(f).

11 38. Defendants’ acts and omissions, as herein alleged, have violated the
12 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
13 rights to full and equal use of the accommodations, advantages, facilities,
14 privileges, or services offered.

15 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
16 discomfort or embarrassment for the plaintiff, the defendants are also each
17 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
18 (c).)

19
20 **PRAYER:**

21 Wherefore, Plaintiff prays that this Court award damages and provide
22 relief as follows:

23 1. For injunctive relief, compelling Defendants to comply with the
24 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
25 plaintiff is not invoking section 55 of the California Civil Code and is not
26 seeking injunctive relief under the Disabled Persons Act at all.


1 2. For equitable nominal damages for violation of the ADA. See
2 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
3 and any other equitable relief the Court sees fit to grant.

4 3. Damages under the Unruh Civil Rights Act, which provides for actual
5 damages and a statutory minimum of \$4,000 for each offense.

6 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
7 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

8
9 Dated: April 28, 2021

CENTER FOR DISABILITY ACCESS

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11 By: 
12 Amanda Seabock, Esq.
13 Attorney for plaintiff